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No. 91-316

Supreme Court, U.S.

FILED

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In The  
**Supreme Court of the United States**  
October Term, 1991

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JOE REDNER, et al.,

*Petitioners,*

vs.

CITRUS COUNTY, FLORIDA, et al.,

*Respondents.*

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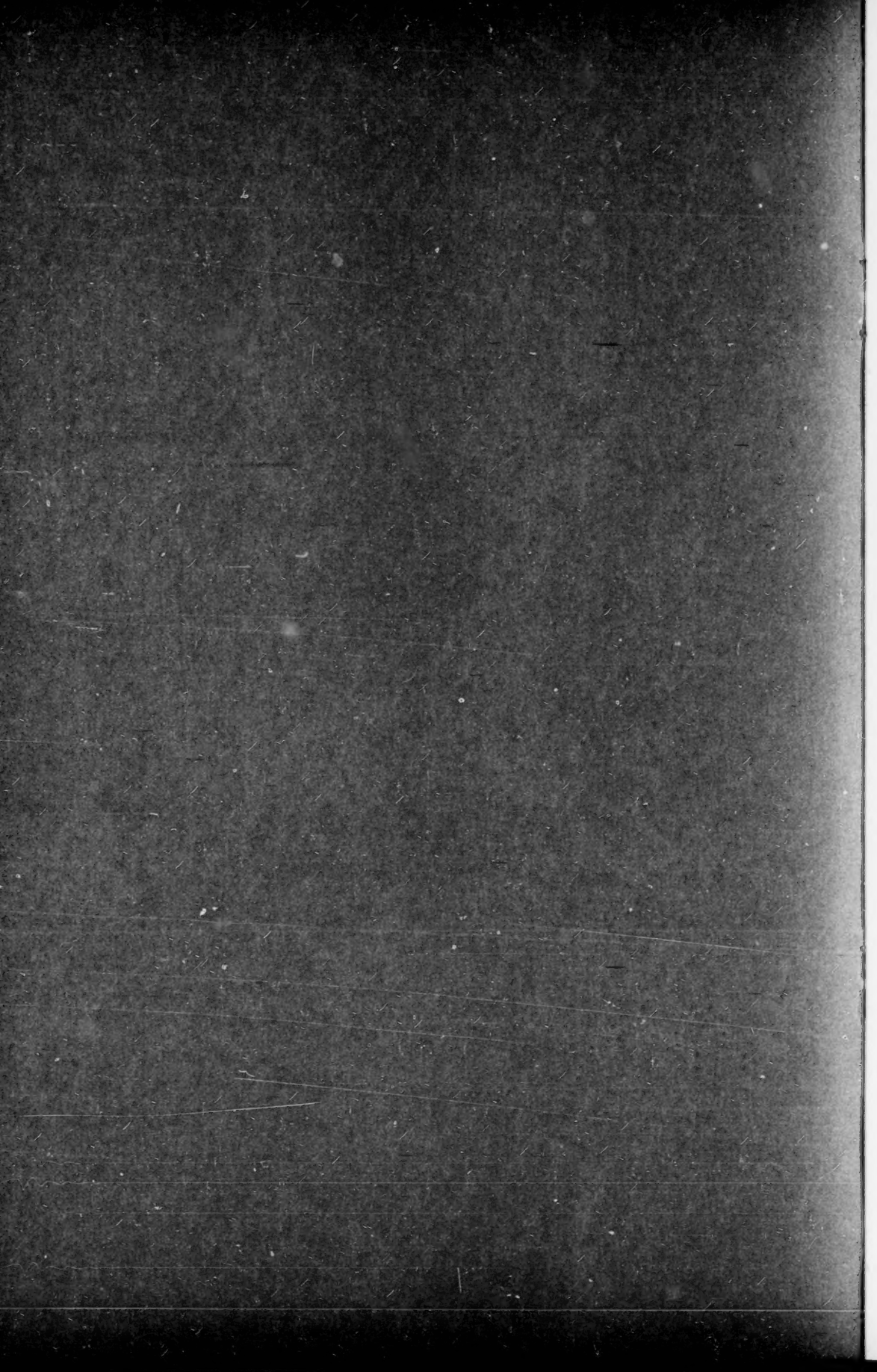
**Petition For A Writ Of Certiorari  
To The United States Court Of  
Appeals For The Eleventh Circuit**

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**BRIEF OF RESPONDENT DEAN IN OPPOSITION  
TO PETITION FOR WRIT OF CERTIORARI**

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## STATEMENT OF THE CASE

This case involves the consolidation of two cases below. Respondent Charles S. Dean, Sheriff of Citrus County was named as a party only in Case No. 88-50-CIV-OC-12.

The facts of that case are as follows: In an emergency session on March 25, 1988, the Board of County Commissioners of Citrus County enacted Ordinance 88-05 which provided that no adult entertainment establishment could operate without first having been issued a license by the County Administrator. (R2-35-4-6). On March 29, 1988, Petitioners Redner and Patrick were arrested for violation of Ordinance 88-05. (R2-35-8). Immediately after his release, Petitioner Redner reopened his business and he and Petitioners Secchiari and Patrick were arrested. (R2-35-8-9). On March 31, 1988, having been released, Petitioner Redner once again reopened his business and he and Petitioners Secchiari, Benard and Oliver were arrested. (R2-35-9). Petitioners alleged that the ordinance was unconstitutional for several reasons, but did not allege that they were not in fact violating the ordinance or that they were arrested without probable cause. (R35-10-14).

The Second Amended Complaint contained four counts: Count I for unconstitutionality of the Citrus County Ordinances; Count II a pendent state law claim for improper adoption of the ordinances; Count III for unconstitutionality of the bond conditions; and Count IV for conspiracy under 42 U.S.C. §1985(3) and §1983. (R2-35-1-20). By Order dated February 13, 1989, the trial court dismissed Count I as to Respondent Dean with

regard to damages only, dismissed Count II without prejudice and dismissed Counts III and IV in their entirety. (R3-53-13). At the conclusion of a three-day trial on the merits pursuant to Fed. R. Civ. P. 65, the trial court dismissed the claim for injunctive relief against Respondent Dean. (R14-681). Plaintiffs presented no evidence at trial that Respondent Dean would attempt to enforce the ordinance if declared unconstitutional and counsel for Respondent Dean affirmatively represented to the trial court that Respondent Dean would not enforce the ordinance if declared unconstitutional. (R14-678).

The Eleventh Circuit Court of Appeals held that the trial court had properly dismissed the claim against Respondent Dean both for damages and for injunctive relief. *Redner v. Citrus County Florida*, 919 F.2d 646, 648 n.3 (11th Cir. 1990).

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## SUMMARY OF THE ARGUMENT

The petition for writ of certiorari should be denied as to Petitioners' claim against Respondent Dean. The decision of the trial court dismissing both the damages claim and the claim for injunctive relief against Respondent Dean was affirmed by the Eleventh Circuit Court of Appeals based on this Court's decision in *Michigan v. DeFillippo*, 443 U.S. 31, 38 (1979) and based on Petitioners' failure to show that Respondent Dean would enforce the ordinances if they were declared unconstitutional. 919 F.2d at 648 n.3. Petitioners have not presented any reason for granting the writ of certiorari with respect to that portion of the Eleventh Circuit's Decision. Therefore, the

writ of certiorari should not be granted as to Respondent Dean.

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### ARGUMENT

The Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit alleges two reasons for granting the writ. Petitioners assert that the decision of the court of appeals affirming *Younger* abstention conflicts with prior decisions of this Court and lower Federal Courts and that the Court of Appeals misconstrued the application of equitable estoppel to the facts of the instant case.

Neither of these grounds presents any reason for granting the writ of certiorari as to Respondent Dean. The trial court dismissed all claims against Respondent Dean on other grounds before deciding the abstention and equitable estoppel arguments.

The damages claim against Respondent Dean was dismissed based on this Court's decision in *Michigan v. DeFillippo*, 443 U.S. 31, 38 (1979) which held that law enforcement officers are immune from claims for damages for enforcing presumptively valid laws. The claim for injunctive relief against Respondent Dean was dismissed because Petitioners failed to show that Respondent Dean would enforce the ordinances if declared unconstitutional. 919 F.2d at 648 n.3.

Petitioners have presented no decision of this Court or any United States Court of Appeals which conflicts with the Eleventh Circuit's decision as to Respondent

Dean. Nor have Petitioners presented any other reason pursuant to U.S. Sup. Ct. Rule 10, 28 U.S.C. for this Court to review the decision of the Court of Appeals with regard to Respondent Dean. The dismissal of the claims against Respondent Dean are not "fairly comprised within the questions presented by the petition for certiorari" and therefore must not be considered by this Court. *Lake Country Estates, Inc. v. Tahoe Regional Planning Agency*, 440 U.S. 391 (1979).

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### CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be denied as to the dismissal of the claims against Respondent Dean.

Respectfully submitted,

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